(1) Supreme Court, U.S.
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No. _____ OFFICE OF THE CLERK

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 2000

JOSE DANIEL RUIZ CORONADO,

Petitioner,

- against -

BANK ATLANTIC BANCORP, INC.,

Respondent.

Petition for Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

(i) Can Congress tether the anomalous authority of a federal grand jury subpoena by requiring a bank to object to such a subpoena to protect the privacy of an account holder whose electronically-stored financial information the bank possesses – and hold the bank liable if they do not?

(ii) May summary judgment be granted based solely upon evidence received by the court *in camera* and *ex parte*?

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

The Petitioner, Jose Daniel Ruiz Coronado, prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Eleventh Circuit entered in this proceeding on August 18, 2000.

OPINIONS BELOW

The opinion of the United States District Court for the Southern District of Florida is reprinted in the appendix hereto, *Appendix-2, infra*. The opinion of the Court of Appeals for the Eleventh Circuit is reprinted in the appendix hereto, *Appendix-11, infra*.

JURISDICTION

The judgment of the Court of Appeals for the Eleventh Circuit was entered on August 18, 2000. The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

CONSTITUTIONAL PROVISIONS, STATUTES AND REGULATIONS INVOLVED

18 U.S.C. §2702 - Disclosure of contents *Appendix-35*

18 U.S.C. §2703(a) – Contents of electronic communications in electronic storage *Appendix-38*

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STATEMENT OF THE CASE

Petitioner Jose Daniel Ruiz Coronado is a citizen of the Republic of Colombia and owned a bank account at Respondent BankAtlantic during the time frame in question.

Coronado opened this account with BankAtlantic on March 13, 1996. Following various account activity, on May 29, 1996, Coronado wire transferred $45,500 out of his account through BankAtlantic's connection to the Federal Reserve Bank's FedWire system.

On June 23, 1996, a civil seizure warrant was issued directing BankAtlantic to freeze the funds held in certain accounts, including Coronado's.

At some point during the 102 days between the opening of Coronado's account on March 13, 1996, and the seizure of his account on June 23, 1996, BankAtlantic received and responded to federal grand jury subpoenas. Included in BankAtlantic's responses to the subpoenas were Coronado's records detailing his bank account activity – including the May 29, 1996, wire transfer.

Subsequently, federal agents agreed to release 400 - 600 of these seized accounts – including Coronado's – as having no connection with money-laundering.

Coronado commenced this action by filing the complaint on September 27, 1996. The complaint alleged, among other grounds, that BankAtlantic was liable to Coronado for breaching its legal duties owed to him under the Electronic Communications Privacy Act, 18 U.S.C. §2701 *et seq.*

As conceded by BankAtlantic and the Eleventh Circuit (*Appendix-28, infra*), Coronado's financial information was protected from disclosure pursuant to a grand jury subpoena by the Electronic Communications Privacy Act as it was in BankAtlantic's electronic communication system for less than 180 days. 18 U.S.C. §§ 2702(b)(2), 2703(a).

During the course of proceedings in the district court, BankAtlantic submitted to the district court *in camera* and *ex parte* its afore-described responses to the federal grand jury subpoenas. Based solely upon this evidence, the district court

granted summary judgment holding that the affirmative defense of the Annuzio-Wylie Anti-Money Laundering Act, 31 U.S.C. §5318(g)(3), was a complete bar to Coronado's action.

On appeal, the Eleventh Circuit affirmed expressly holding that the Electronic Communications Privacy Act's §2703 was void by dint of Judicial superceding authority over federal grand jury practice and procedure. Significantly, the Eleventh Circuit refused to review the raised issue of granting summary judgment upon evidence received *ex parte* and *in camera*.

REASONS FOR GRANTING THE WRIT

The first reason for granting this writ is that Congress has specifically prohibited grand juries from accessing by subpoena information held in electronic storage for 180-days-or-less. Moreover, by that same act, Congress held a bank liable if it releases such information without a proper warrant. Implicitly, Congress requires that a bank challenge a grand jury subpoena which seeks such protected information or suffer the consequences if it doesn't.

The Eleventh Circuit in its holding below has specifically held that Congress cannot impose such a restriction and such an attempt by Congress is void as it is the Judiciary, not Congress, which determines the limits of a grand jury subpoena. Such a holding invalidates the Congressional scheme embodied – and explicitly approved by this Court – in the Electronic Communications Privacy Act and renders Congress powerless to tether the grand jury investigative function.

Second, it is axiomatic that Federal Rules of Civil

Procedure, due process and notions of fair play preclude the granting of summary judgment based upon evidence the plaintiff never sees and thus to which he can never respond.

As these issues raise questions vital to the administration of justice, the writ must be granted.

I. Congress Can Limit The Reach Of Grand Jury Subpoenas

The first issue is whether Congress can require third parties to challenge federal grand jury subpoenas – and hold them liable if they don't – which seek information Congress has mandated can only be obtained by a judicially-issued warrant.

A. The Electronic Communications Privacy Act's Limitations on the Scope of Grand Jury Subpoenas

This issue has been framed by the tension between two acts of Congress – The Electronic Communications Privacy Act found at 18 U.S.C. §2701 *et seq.* and the "safe harbor" provision of the Annuzio-Wylie Anti-Money Laundering Act found at 31 U.S.C. §5318(g)(3).

In the former, Congress expressly limited access to information held in electronic storage for 180-days-or-less to be by means of a judicially-issued warrant. 18 U.S.C. §2703(a).

See: Appendix-38. This Congressional intention is made even more certain as grand jury subpoenas are expressly permitted to access information held in electronic storage for more than 180 days under 18 U.S.C. §2703(b)(1)(B)(i). *See: Appendix-39.* Moreover, Congress imposed civil liability on the holders of such information for disclosure outside the access scheme contained in the Electronic Communications Privacy Act. 18 U.S.C. §2707. *See: Appendix-44.* Implicit in this disclosure scheme is that such holders of information have a duty to object to such prohibited subpoenas or suffer civil liability 18 U.S.C. §2707(a).

Raised solely by BankAtlantic against its conceded liability under the Electronic Communications Privacy Act's access scheme is the so-called third "safe harbor" provision of the Annunzio-Wylie Anti-Money Laundering Act. This provision provides immunity from civil liability for any financial institution which made a disclosure of financial information pursuant to "other authority". 31 U.S.C. §5318(g)(3). *See: Appendix-48.*

Correctly, the Eleventh Circuit has held in *Lopez v. First*

Union, 129 F.3d 1186 (11th Cir. 1997), that:

> The third safe harbor provision protects a financial institution's disclosure pursuant to "any other authority." 31 U.S.C. § 5318(g)(3). . . . The "other authority" must be legal authority, because authority means "right to exercise powers," *Black's Law Dictionary* 133 (6th Ed. 1991), and in our system based on rule of law, the right to exercise power is derived from law, e.g., statutes, regulations, court orders, etc. Hence, for a financial institution's disclosure to fall within the confines of the third safe harbor, the financial institution must be able to point to a statute, regulation, court order, or other source of law that specifically or impliedly authorized the disclosure. If it cannot do so, the disclosure is not entitled to the protection of the safe harbor.

Id. at 1193-1194.

Hence, the question is framed: Is a federal grand jury subpoena "other authority"? If it is, then BankAtlantic enjoys immunity under 31 U.S.C. §5318(g)(3) for its disclosure pursuant to federal grand jury subpoenas of Coronado's bank account information. However, if the grand jury subpoenas are not such "other authority" as they are <u>not</u> "legal authority", then BankAtlantic is liable for such disclosures.

In holding that grand jury subpoenas are "other authority" and that BankAtlantic has immunity from civil suit, the Eleventh Circuit held:

> The question here is not whether the government or the grand jury obtained evidence in violation of the [Electronic Communications Privacy Act], but whether BankAtlantic is liable to Coronado for its disclosure. BankAtlantic was subpoenaed merely as a witness, and long-standing grand jury policy and practice suggests that ***we do not want*** witnesses (who are not even targets of the grand jury) testing the limits of the grand jury's authority. (emphasis added).

Id. at *Appendix-27, infra*. This use of the judicial first person plural "we" thus succinctly focuses the pressing question: who determines the duties of witnesses in responding to a grand jury subpoena: Congress or the Judiciary?

If Congress, then the express warrant requirement for 180-day-or-less information contained in 18 U.S.C. §2703(a) must be respected and enforced. If the Judiciary – as the Eleventh Circuit held – then a district court has the ascendancy to strip Congress of its authority to limit a grand jury's investigation

by releasing a bank from any liability for responding to grand jury subpoenas seeking Congressionally protected information.

B. Congress – Not the Judiciary – Determines the Scope of Federal Grand Jury Investigative Powers

The initial recourse to determine which branch of government determines the limits upon grand jury investigative powers is the U.S. Constitution. There, the Fifth Amendment simply states that "No person shall be held to answer for a capital, or otherwise infamous, crime, unless on a presentment or indictment of a grand jury . . .". Tellingly, no other mention is made in the Constitution of the institution of the grand jury. As such, the Constitution is not instructive in this regard.

Nonetheless, the Judicial branch – through action of this Court – adopted rules for the operation of the federal grand jury. *See*: Rule 6, Federal Rules of Criminal Procedure. The original Federal Rules of Criminal Procedure were adopted by order of

this Court on December 26, 1944, transmitted to Congress by the Attorney General on January 3, 1945, and became effective on March 21, 1946.

Determinative of the instant question, these Rules of Criminal Procedure could not have become law without Congressional approval on March 21, 1946 and thereafter.

Indeed, at 28 U.S.C. §§2071, 2072 Congress expressly delegated to the Supreme Court the power to make rules – including Rule 6 related to federal grand juries – regarding the practice and procedures in the district courts. Noteworthy however, is that Congress limited such rules to "not abridge, enlarge or modify any substantive right." 28 U.S.C. §2072(b).

Hence, under 18 U.S.C. 2703(a), Coronado has a "substantive right" to have his 180-day-old-or-less account records at BankAtlantic accessed only by judicially-issued warrant. As such, the Judicial branch is unauthorized to eliminate this right by rule of practice as the Eleventh Circuit attempted to here.

Accordingly, Congress (i) granted to this Court limited authority to enact the Rules but (ii) retained the authority to change these Rules and in fact has amended these Rules whenever it saw fit. *See:* for the most recent example: Public Law 104-132, Title II, Sec. 207(a). As the authority of this Court to make rules regarding federal grand juries is only by express grant of Congress, the Eleventh Circuit is sorely misplaced when it states that " ***we do not want*** witnesses . . . testing the limits of the grand jury's authority" as it is Congress – not the Judiciary – who determines who tests the limits of the grand jury's authority.

Here, Congress plainly – through enactment of the Electronic Communications Privacy Act – wanted the holders of this 180-day-or-less electronic information to challenge a grand jury's subpoena for the simple reason that no one else has the knowledge to so challenge. Coronado never timely knew of the grand jury subpoenas and hence would never have had the opportunity to challenge them.

This is why Congress made the policy decision in the Electronic Communications Privacy Act to require such a challenge by the only possible entity: the third-party holder of such information – here BankAtlantic. Indeed, telling of Congress' high level of concern for the protection of this precious information, is that even when grand jury subpoenas are authorized to access information held in electronic storage for more than 180 days, Congress required such access to be only after notice to the customer. 18 U.S.C. §2703(b)(1)(B)(i).

This Court enshrined a similar Congressional power in *Gelbard v. United States*, 408 U.S. 41; 92 S. Ct. 2357; 33 L. Ed. 2d 179 (1972). The central issue in *Gelbard* was whether 18 U.S.C. §2515 – "*Prohibition of use as evidence of intercepted wire or oral communications*" – could be used by a witness to resist testifying before a grand jury. Congress, through §2515, required that:

> Whenever any wire or oral communication has been intercepted, no part of the contents of such communication and no evidence derived

> therefrom may be received in evidence . . . before any . . . grand jury . . . if the disclosure of that information would be in violation of this chapter.

Hence, Congress prohibited what evidence the grand jury could subpoena and use by this section – illegally obtained oral or wire communications under the Electronic Communications Privacy Act. In discussing the importance of §2515 to the statutory scheme of the Electronic Communications Privacy Act, in the majority opinion, Justice Brennan stated:

> Section 2515 is thus central to the legislative scheme. Its importance as a protection for "the victim of an unlawful invasion of privacy" could not be more clear. The purposes of §2515 and Title III as a whole would be subverted were the plain command of §2515 ignored when the victim of an illegal interception is called as a witness before a grand jury and asked questions based upon that interception.

Id. at 50-51. Plainly, not only does Congress have the power to limit what information may be obtained by a grand jury, this Court has expressly ratified this power – which the Eleventh Circuit below has now scrapped – in *Gelbard*. Furthermore, if Congress can empower a witness to resist grand jury questioning

on subjects it has determined are privileged from disclosure by a witness – illegally intercepted wire communications as in *Gelbard* – then it most certainly can extend that privilege to the agent of a witness – here BankAtlantic which possessed the Congressionally-protected information.

In sum, as grand jury subpoenas are not "legal authority" as they are expressly excluded by the Electronic Communications Privacy Act from accessing information in storage held for 180-days-or-less, then they cannot be "other authority" under the Annuzio-Wylie Anti-Money Laundering Act's third "safe harbor" provision. As such, a bank must resist such non-legal subpoenas or suffer the Congressionally-ordained consequences.

Accordingly, it is Congress – not the Judiciary – which determines the limits of grand jury subpoenas. As BankAtlantic ignored its obligation in this regard, it is liable to Coronado for the disclosures it made pursuant to the patently over-reaching grand jury subpoenas.

II. Summary Judgment Cannot Be Granted Upon Evidence Considered *Ex Parte* and *In Camera*

The district court received evidence *in camera* and *ex parte* and upon such evidence based its decision to grant summary judgment to BankAtlantic. The district court held:

> The Court has reviewed the grand jury subpoenas submitted *in camera* and finds that BankAtlantic made all disclosures of possible violations of money laundering and bank fraud laws pursuant to valid grand jury subpoenas.

Appendix-6, infra. The district court's conclusion determined that the affirmative defense of 31 U.S.C. §5318(g) is valid without an opportunity for Coronado to know or test this evidence. Such a procedure simply cannot comport with due process particularly in this case where Congress expressly gave Coronado the rights he sought to pursue under the Electronic Communications Privacy Act.

Indeed, under Rule 56(e), Federal Rules of Civil Procedure, the non-moving party, here Coronado, must come forward with facts showing there is a genuine issue for trial. How

can this be done when the particular facts presented by BankAtlantic are unknown to Coronado. *Accord*: *Matsushita Electronic Industrial Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986).

Noteworthy, though this issue was expressly raised to the Eleventh Circuit by Coronado, it was relegated to an issue of discovery, not summary judgment, by the Eleventh Circuit and hence was ignored in their opinion. *See: Appendix-33, infra.*

Accordingly, the practice of *ex parte, in camera* determination of summary judgment can not be condoned by this Court declining review of this practice.

CONCLUSION

For the foregoing reasons and to secure the proper administration of justice, this Court must exercise its jurisdiction and grant this Petition.

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Opinions Below

Order Granting BankAtlantic's Motion for Summary Judgment of the United States District Court, Southern District of Florida, entered on May 24, 1999 . . . . . *Appendix-2*

Opinion of the United States Court of Appeals for the Eleventh Circuit, entered August 18, 2000 . . . . . *Appendix-11*

Constitutional Provisions, Statutes and Regulations Involved

18 U.S.C. §2702 - Disclosure of contents *Appendix-35*

18 U.S.C. §2703(a) – Contents of electronic communications in electronic storage *Appendix-38*

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31 U.S.C. § 5318(g)(3) - Liability for disclosures *Appendix-48*

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 96-7115-C.V.-GONZALEZ

JOSE DANIEL RUIZ CORONADO

Plaintiff,

vs.

BANKATLANTIC BANCORP, INC.,

Defendant.

ORDER

THIS CAUSE has come before the Court upon BankAtlantic's Motion for Summary Judgment, filed June 24, 1998, Plaintiff's Motion for Summary Judgment, filed April 6, 1999, Plaintiff's Motion to Compel Response to Deposition, filed April 6, 1999, and Plaintiff's Motion to Reconsider or Alternatively Certify for Appeal the Court's Rulings on Plaintiff's Motions to Compel Discovery and Certify the Class, filed April 6, 1999.

HISTORY:

In June 1995, BankAtlantic discovered suspicious activity

in numerous accounts in BankAtlantic's international division. BankAtlantic reported the activity to the federal authorities. Eventually, a grand jury issued subpoenas for certain account records. BankAtlantic complied with the grand jury subpoenas. Plaintiff was one of the account holders under investigation and thereafter, filed this suit.

On January 22, 1997, this Court found that the Annunzio Wylie Anti-Money Laundering Act, Title 31 U.S.C. §5318(g) immunized BankAtlantic from liability for its disclosures and dismissed Plaintiff's complaint with prejudice. The Eleventh Circuit reversed this Court's Order of Dismissal holding that it was premature to dismiss the case based solely on the factual allegations in Coronado's complaint. *Lopez v. First Union National Bank of Florida*, 129 F.3d 1186 (11th Cir. 1997), *reh'g denied* 141 F.3d 1191 (11th Cir. 1998).

The parties are now at the summary judgment stage of this action and the primary issue to be resolved is whether any of the safe harbor provisions of the Annunzio-Wylie Act immunize

BankAtlantic from liability.

STANDARD:

The Court may grant summary judgment if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Fed.R.Civ.P. 56(c). The stringent burden of establishing the absence of a genuine issue of material fact lies with the moving party. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986) . The Court should not grant summary judgment unless it is clear that a trial is unnecessary, *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986), and any doubts in this regard should be resolved against the moving party, *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 157 (1970).

The movant bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions of the record which it believes demonstrate the absence of a genuine issue of material fact. *Celotex Corp.*, 477 U.S. at

323. To discharge this burden, the movant must point out to the Court that there is an absence of evidence to support the nonmoving party's case. *Id.* at 325.

After the movant has met its burden under Rule 56 (c), the burden of production shifts and the nonmoving party must do more than simply show that there is some metaphysical doubt as to the material facts. *Matsushita Electronic Industrial Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). According to the plain language of Fed.R.Civ.P. 56(e), the non-moving party may not rest upon the mere allegations or denials of the adverse party's pleadings, but instead must come forward with specific facts showing that there is a genuine issue for trial, Fed.R.Civ.P. 56(e); *Matsushita*, 475 U.S. at 587.

Essentially, so long as the non-moving party has had an ample opportunity to conduct discovery, it must come forward with affirmative evidence to support its claim. *Anderson*, 477 U.S. at 257. A mere scintilla of evidence supporting the opposing party's position will not suffice; there must be a sufficient

showing that the jury could reasonably find for that party. *Walker v. Darby*, 911 F.2d 1573, 1577 (11th Cir. 1990). If the evidence advanced by the non-moving party is merely colorable, or is not significantly probative, then summary judgment may be granted. *Anderson*,477 U.S. 242, 249-50.

DISCUSSION:

BankAtlantic asserts that it provided the grand jury with access to account documents, records and financial information only pursuant to valid grand jury subpoenas. As a result, BankAtlantic contends that it is shielded by the third safe harbor provision of the Annunzio-Wylie Act.

In support of its argument, BankAtlantic submits the grand jury subpoenas for in camera review. The Court has reviewed the grand jury subpoenas submitted in camera and finds that BankAtlantic made all disclosures of possible violations of money laundering and bank fraud laws pursuant to valid grand jury subpoenas.

Notwithstanding the grand jury subpoenas, Plaintiff

contends that Defendant violated both the Electronic Communications Privacy Act, Title 18 U.S.C. §2510 et seq., and the Right to Financial Privacy Act, Title 12 U.S.C. §3401 et seq., by turning over account information to the grand jury. The Court disagrees.

The Annunzio-Wylie Act reads as follows:

> Any financial institution that makes a disclosure of any possible violation of law or regulation or a disclosure pursuant to this subsection or any other authority, and any director, officer, employee or agent of such institution, shall not be liable to any person under any law or regulation of the Untied States or any constitution, law, or regulation of any state or political subdivision thereof, for such disclosure or for any failure to notify the person involved in the transaction or any other person of such disclosure. 31 U.S.C. §5318(g) (3).

The third safe harbor provision of the Annunzio-Wylie Act provides immunity for disclosure of possible violations of laws pursuant to any other authority. The Eleventh Circuit, in its earlier decision in this case and consolidated case *Lopez* held that for a financial institution's disclosure to fall within the confines of the third safe harbor, the financial institution must be able to point

to a statute, regulation, court order or other source of law that specifically or impliedly authorized the disclosure. *Lopez* at 1193-94.

A grand jury is authorized to use subpoenas to compel the production of evidence. Without this tool, a grand jury would be unable to properly determine the matters before it.

Plaintiff's contention that a grand jury subpoena should not be considered legal authority within the meaning of the Annunzio-Wylie Act is untenable. The Founders of this country believed so strongly in the necessity of the grand jury that they provided for it in the Fifth Amendment of the United States Constitution. See *United States v. Calandra*, 414 U.S. 338, 343 (1974). Accordingly, the Court finds that a grand jury subpoena does fall within the purview of any other authority as provided in the Annunzio-Wylie Act.

Therefore, BankAtlantic is not liable to the Plaintiff under either the Electronic Communications Privacy Act or the Right to Financial Privacy Act because the Annunzio-Wylie Act states that

a financial institution - BankAtlantic - that makes a disclosure pursuant to any other authority - a grand jury subpoena - is not liable under any law of regulation of the United States.

The Court finds that a genuine issue of material fact does not exist in this case and summary judgment shall be granted in favor of BankAtlantic.

Having heard oral argument and having reviewed the motions, the record in this matter, and being otherwise duly advised, it is hereby:

ORDERED AND ADJUDGED as follows:

1. BankAtlantic's Motion for Summary Judgment is GRANTED. BankAtlantic shall file a proposed form of final judgment within twenty (20) days of the date of this Order.

2. Plaintiff's Motion for Summary Judgment is DENIED.

3. Plaintiff's Motion to Compel Response to Deposition is DENIED.

4. Plaintiff's Motion to Reconsider or Alternatively Certify

for Appeal the Court's Rulings on Plaintiff's Motions to Compel Discovery and Certify the Class is DENIED.

5. All other pending motions are DENIED as MOOT.

DONE AND ORDERED in Chambers at Fort Lauderdale, Florida, this 24 day of May, 1999.

JOSE A. GONZALEZ, JR.

UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 99-12108

D.C. Docket No. 96-07115-CV-JAG

JOSE DANIEL RUIZ CORONADO,

Plaintiff-Appellant,

versus

BANK ATLANTIC BANCORP, INC.,

Defendant-Appellee.

Appeal from the United States District Court
for the Southern District of Florida.

(August 18, 2000)

Before TJOFLAT, MARCUS and CUDAHY*, Circuit Judges.

CUDAHY, Circuit Judge:

BankAtlantic Bancorp, Inc. (BankAtlantic) responded to grand

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* Honorable Richard D. Cudahy, U.S. Circuit Judge for the Seventh Circuit sitting by designation.

jury subpoenas by producing the bank records of nearly 1100 international customers. Coronado, one of these customers purporting to represent a class including the others, filed this lawsuit against BankAtlantic for unlawful disclosure of financial information, claiming that BankAtlantic's disclosure violated federal and state law. BankAtlantic claimed immunity under the Annunzio-Wylie Anti-Money Laundering Act's (Annunzio-Wylie Act or Act) safe harbor provision, 31 U.S.C. §5318(g)(3), because their disclosure was made pursuant to the grand jury subpoenas. The district court initially granted BankAtlantic's motion to dismiss, but this court reversed and remanded. See *Lopez v. First Union Nat'l Bank of Florida*, 129 F.3d 1186, 1196 (11th Cir. 1997). On remand, the case proceeded to discovery, and Coronado filed several motions to compel disclosure of copies of the grand jury materials as well as information on BankAtlantic's internal operations. The district court denied these motions. BankAtlantic then moved for summary judgment, and the district court granted that motion. Coronado appeals.

I. Facts and Disposition Below

A. General Background

In February of 1995, BankAtlantic acquired MegaBank, a Dade County commercial bank, in order to create an international division. MegaBank's international division was headed by Piedad Ortiz, and after the acquisition, she became Vice President of BankAtlantic's international division. Ortiz had overseen approximately 1100 accounts at MegaBank, and she continued this supervision at BankAtlantic. Shortly after acquiring MegaBank, BankAtlantic conducted an internal audit of its new international division, and this audit revealed suspicious practices. A private pouch service made regular deliveries addressed to "BankAtlantic, International Division, Attention Ms. Piedad Ortiz." These pouches, which were uninsured, contained large amounts of checks, money orders and negotiable instruments along with deposit and transfer instructions. The pouches originated from a private courier service—discretely located in the back of another business—in Bogota, Columbia,

and the checks and other instruments transported in the pouches were from various locations in the United States, including New York and New Jersey. BankAtlantic discovered that Ortiz and her assistant, Lucia Ramirez (who had also joined BankAtlantic as part of the MegaBank acquisition), were responsible for initiating and maintaining this pouch service.

The BankAtlantic audit also revealed that Ortiz and her assistant were approving new accounts that were missing required customer identification documentation and allowing personal accounts to be used as unregistered money exchange facilities (in probable violation of Florida law). Further, BankAtlantic discovered, among other irregularities, that letters of authorization were missing for numerous wire transfers and that no currency transaction reports were filed when bearer instruments in excess of $10,000 arrived in the pouches from Bogota. There were millions of dollars flowing into and out of these Columbia-based accounts each month.

BankAtlantic became suspicious that its new international

division, as headed by Ortiz, was facilitating money laundering and bank fraud. BankAtlantic took these suspicions to federal law enforcement officials in June of 1995. At this point, the bank provided general information regarding its suspicions along with customer names and account numbers for only five accounts obviously connected with this questionable activity. BankAtlantic did not disclose the contents of any incoming or outgoing wire transfers at this time.

The federal government investigated this suspected money laundering and bank fraud, and sometime in the spring of 1996, three grand juries were impaneled. These grand juries—sitting in the Southern District of Florida, the Eastern District of New York and the District of New Jersey—investigated individuals and organizations in Florida, New York and New Jersey for the suspected laundering of Columbian drug money. In the late spring, the grand juries issued and served subpoenas on BankAtlantic demanding that it produce copies of account documents, records and information regarding the 1100 accounts

under the oversight of Ms. Ortiz in the international division.

The federal investigation was centered on these 1100 accounts that Ortiz had supervised at MegaBank and later at BankAtlantic, and on June 5, 1996, the United States Department of Justice, in conjunction with Columbian law enforcement agencies, announced the arrest of several individuals: Ortiz and Ramirez[1] were arrested upon suspicion that they were committing bank fraud to facilitate the illegal movement of funds by individuals in Columbia. Also on June 5, Judge Davis of the Southern District of Florida issued a ten-day ex parte temporary restraining order freezing the 1100 accounts in BankAtlantic's international division. On June 11, 1996, Judge Davis released the funds in some accounts, and then, on June 23, the district court issued a seizure warrant to freeze the remaining accounts until further court order. A supplemental order directed the Drug

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[1] On June 14, 1996, a federal grand jury indicted both Ortiz and Ramirez for making false entries in the books and records of BankAtlantic to keep the bank unaware of the currency transfer operation from Columbia.

Enforcement Agency (DEA) to physically seize all of the frozen funds (subject to certain exceptions not relevant here). Accordingly, BankAtlantic turned the funds over to the DEA on August 1, and on August 8, forfeiture proceedings were commenced against many of the accounts. About six months after the initial seizure, the government agreed to release between 400 and 600 of the accounts—there is no evidence in the record suggesting why—and the funds were returned to these account holders with full interest in December of 1996.

B. Coronado's Account and Lawsuit

Coronado opened his account with BankAtlantic on May 13, 1996 – almost a year after BankAtlantic first reported suspicious activity to the federal government and, as it turned out, about three weeks before Ortiz's arrest. Ortiz had opened the account for Coronado using instruments drawn on United States's banks that had been shipped from Bogota, Columbia, to Miami via the private courier service. Coronado's initial deposit consisted of four checks in odd amounts that totaled exactly

$5000 in value, and subsequent deposits were comprised of checks, travelers' checks and money orders drawn on banks in New York and New Jersey. Once the amount Coronado had on deposit grew to a little less then $46,000, $45,500 was wire transferred to a Swiss bank account. The day after the transfer, new deposits began. BankAtlantic had not mentioned Coronado in its initial disclosure to federal authorities in 1995 (recall, he did not open his account until 1996), but Coronado's account information and the records of the wire transfer to Switzerland were turned over to the grand jury pursuant to the 1996 subpoenas. On June 5, 1996, Coronado's account was frozen along with the other 1100 that Ortiz had supervised, but his account was not among those released on June 11. Instead, his funds were seized pursuant to the district court orders, and forfeiture proceedings were commenced against Coronado's account on August 8. His account was eventually released, along with the 400 to 600 others, pursuant to the agreement with the government, and his funds were returned (with interest) before

the end of 1996.

Months earlier, on September 30, 1996, Coronado had filed this lawsuit against BankAtlantic, purportedly representing a class consisting of himself and the other 1100 holders of accounts in BankAtlantic's international division. In his complaint, Coronado alleged that BankAtlantic violated the Electronic Communications Privacy Act (ECPA), 18 U.S.C. § 2510 et seq., the Right to Financial Privacy Act (RFPA), 12 U.S.C. § 3401 et seq., and Florida law by disclosing account information and records to the grand juries. Before class certification, BankAtlantic moved to dismiss Coronado's complaint under Federal Rule of Civil Procedure 12(b)(6), and the district court granted that motion, dismissing Coronado's complaint with prejudice exclusively on the ground that BankAtlantic was immune from suit under the Annunzio-Wylie Act's safe harbor provision, 31 U.S.C. § 5318(g)(3). On appeal, this court reversed and remanded because the allegations in Coronado's complaint, taken in the light most favorable to

Coronado, did not establish grounds for BankAtlantic's immunity. See *Lopez*, 129 F.3d at 1194-96. On remand, the case proceeded through a few months of discovery, with Coronado making motions to compel BankAtlantic's production of copies of the grand jury subpoenas and documents turned over to the grand juries as well as to compel production of other BankAtlantic information. The district court denied all these motions, and in June of 1998, BankAtlantic moved for summary judgment. The district court granted BankAtlantic's motion, again on the ground that the bank was shielded by the safe harbor provisions of the Annunzio-Wylie Act. Coronado again appeals.

II. Discussion

In his brief on appeal, Coronado identifies three issues we must decide: (1) whether the Annunzio-Wylie Act provides BankAtlantic with immunity from his claims under federal and state law; (2) whether Coronado was entitled to partial summary judgment that BankAtlantic had violated the RFPA and the ECPA; and (3) whether the district court erred in denying

Coronado's motions to compel discovery. We review the first two issues de novo, see *Ross v. Clayton County, Ga.*, 173 F.3d 1305, 1307 (11th Cir. 1999), and review the discovery issue for abuse of discretion, see *Leigh v. Warner Brothers, Inc.*, No. 99-10087, 2000WL 679162, at 7 (11th Cir. May 25, 2000).

A. Immunity Under the Annunzio-Wylie Act

In 1992, Congress enacted the Annunzio-Wylie Anti-Money Laundering Act in order to facilitate cooperation between domestic financial institutions and the United States government to stop the global movement of drug money. Large criminal enterprises depend on their ability to conceal the proceeds of their criminal endeavors, and the Annunzio-Wylie Act seeks to make concealment much more difficult by encouraging financial institutions to disclose suspicious activity and cooperate with law enforcement efforts. But, because disclosure of financial information – either spontaneously or after a request from the government – could possibly lead to litigation with disgruntled customers like Coronado, the Annunzio-Wylie Act granted

immunity to banks making disclosures. The safe-harbor provision, to this end, reads in its entirety as follows:

> Any financial institution that makes a disclosure of any possible violation of law or regulation or a disclosure pursuant to this subsection or any other authority, and any director, officer, employee, or agent of such institution, shall not be liable to any person under any law or regulation of the United States or any constitution, law, or regulation of any State or political subdivision thereof, for such disclosure or for any failure to notify the person involved in the transaction or any other person of such disclosure.

31 U.S.C. §5318(g)(3). The plain language of this section supplies "an affirmative defense to claims against a financial institution for disclosing an individual's financial records or account-related activity." *Lopez*, 129 F.3d at 1191. Few courts have had the opportunity to examine this section in detail, but we recently explained in *Lopez* that § 5318(g)(3) grants to financial institutions "immunity from liability for three different types of disclosures: (i.) A disclosure of any possible violation of law or regulation, (ii.) A disclosure pursuant to § 5318(g) itself, or (iii.) A disclosure pursuant to any other authority." *Id.* These safe

harbors are not limited to currency transactions, and any one of them provides a disclosing bank complete immunity. See *id.* at 1192.

BankAtlantic claims, and Coronado does not dispute, that the grand jury subpoenas it received were facially valid and properly served. BankAtlantic argues, quite simply, that because it only disclosed information pursuant to these subpoenas, it disclosed information in accordance with "other authority" and has immunity under the Annunzio-Wylie Act's safe harbor (iii). In *Lopez*, we explained § 5318(g)(3)'s third safe harbor and the meaning of "any other authority" as follows:

> The "other authority" must be legal authority, because authority means "[r]ight to exercise powers," Black's Law Dictionary 133 (6th ed. 1991), and in our system based on rule of law, the right to exercise power is derived from law, e.g. statutes, regulations, court orders, etc. Hence, for a financial institution's disclosure to fall within the confines of the third safe harbor, the financial institution must be able to point to a statute, regulation, court order, or other source of law that specifically or impliedly authorized the disclosure. If it cannot do so, the disclosure is not entitled to the protection of the [third] safe

harbor.

Lopez, 129 F.3d at 1193-94. In *Lopez*, by way of example, we explained that "[c]learly a disclosure in response to a seizure warrant is protected by the third safe harbor." *Id.* at 1194. However, we also explained that a government agent's "verbal request" for information is not "other authority" because there is no "statute or regulation which gives a government official's verbal request to access an individual's financial records the force of law." *Id.* *Lopez* did not explicitly address grand jury subpoenas, but we believe that these are properly considered "other authority" for the purposes of § 5318(g)(3).

A federal grand jury has extremely broad investigatory powers and, unlike a federal agent making a verbal request, "may compel the production of evidence or the testimony of witnesses as it considers appropriate." *United States v. Calandra*, 414 U.S. 338, 343 (1974). A grand jury has the power to compel the production of evidence because "a federal grand jury subpoena is issued under the authority of a court." *Doe v. DiGenova*, 779

F.2d 74, 80 (D.C. Cir. 1985). More specifically: under Federal Rule of Criminal Procedure 17(a), the clerk of a district court is authorized to issue blank subpoenas (marked with the seal of the court) to a prosecutor working with a grand jury. See *DiGenova*, 779 F.2d 80 n.12. If a recipient of a grand jury subpoena does not produce the evidence sought, the recipient that disobeyed the subpoena (which is essentially an order of the court), is in contempt, see 28 U.S.C. § 1826; Fed. R. Crim. P. 17(g), and may be fined or imprisoned, see 28 U.S.C. § 1826. Thus, unlike, for example, a mere verbal request from a government agent, there is a legal mechanism to enforce grand jury subpoenas. They possess the "force of law" because they are issued under the authority of a federal district court, and disobedience can lead to a legal sanction. See generally *Calandra*, 414 U.S. at 345 ("The power of a federal court to compel persons to appear and testify before a grand jury is . . . firmly established.").

But Coronado is quick to point out that the reach of grand jury subpoenas is not unlimited: a federal district court has the

power to quash a grand jury subpoena requesting documents "if compliance would be unreasonable or oppressive," see Fed. R. Crim. P. 17(c), and a grand jury "may not itself violate a valid privilege, whether established by the Constitution, statutes, or the common law." *Calandra*, 441 U.S. at 346. Also, Congress has the power to limit grand jury subpoenas by enacting statutes, see *Gelbard v. United States*, 408 U.S. 41, 52 (1972) (holding that, under 18 U.S.C. § 2515, a witness called before a grand jury can refuse to answer questions based on information obtained in violation of Title III of the Omnibus Crime Control and Safe Streets Act of 1968). Coronado argues that the account records demanded in the grand jury subpoenas here were "privileged" under the ECPA and therefore outside the reach of the grand jury. His argument is, essentially, that because § 2703(a) of the ECPA states that "[a] governmental entity may require the disclosure . . . of the contents of an electronic communication, that is in electronic storage in an electronic communications system for one hundred and eighty days or less, only pursuant to a warrant under

the Federal Rules of Criminal Procedure," and because grand jury subpoenas are not warrants, the grand juries lacked the power to compel production of his account information. Therefore, BankAtlantic's disclosure pursuant to a grand jury subpoena violated this provision of the ECPA, and it cannot use the shelter of the Annunzio-Wylie Act's safe harbor, Coronado concludes.

Coronado's argument begs the question. The question here is not whether the government or the grand jury obtained evidence in violation of the ECPA, but whether BankAtlantic is liable to Coronado for its disclosure. BankAtlantic was subpoenaed merely as a witness, and long-standing grand jury policy and practice suggests that we do not want witnesses (who are not even targets of the grand jury) testing the limits of the grand jury's authority. The Supreme Court has emphasized that "a witness may not interfere with the course of the grand jury's inquiry." *Calandra*, 414 U.S. at 345. Further, as a witness, BankAtlantic was "not entitled to urge objections of incompetency or irrelevancy, such as a party might raise," *id.*, nor

was BankAtlantic entitled "to challenge the authority of the court or of the grand jury, provided they have a de facto existence and organization." *Blair v. United States*, 250 U.S. 273, 282 (1919) (holding that witnesses could not refuse to testify or produce documents on the ground that the relevant criminal statute was unconstitutional). See also *Calandra*, 414 U.S. at 345. "[A witness] is not entitled to set limits to the investigation that the grand jury may conduct." *Blair*, 250 U.S. at 282. Thus, even if the ECPA technically deprived the grand jury of the authority to demand the account records from BankAtlantic, BankAtlantic – as a witness – was not in a position to test the limits of the grand jury's authority. BankAtlantic was presented with facially valid subpoenas from three federal grand juries investigating money laundering. Forcing a bank to challenge a facially valid grand jury subpoena in order to avoid liability to one (or more) of its customers would fly in the face of both the Annunzio-Wylie Act's clear intent to encourage cooperation with money laundering investigations and the more general policy favoring the "effective

and expeditious discharge of the grand jur[ies'] duties." *Calandra*, 414 U.S. at 349-50. We believe it proper to label grand jury subpoenas, like search warrants or court orders, "legal authority" under Lopez, and we find that a grand jury subpoena qualifies as "other authority" under the Annunzio-Wylie Act's third safe harbor. BankAtlantic's disclosure, therefore, is covered by the third safe harbor.

Having determined that BankAtlantic is protected by §5318(g)(3)'s third safe harbor, it remains only to determine the scope of the immunity granted by the statute. This is a straight-forward determination. Section 5318(g)(3) states that a qualified bank "shall not be liable to any person under any law or regulation of the United States or any constitution, law, or regulation of any State." 31 U.S.C. § 5318(g)(3) (emphasis added). This immunity is very broad.[2] As we recently reiterated

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[2] There is no official legislative history for the Annunzio-Wylie Act, but in a letter written after the passage of the Act, Chairman of the House Subcommittee on Financial Institutions, and sponsor of the Act, Congressman Frank Annunzio explained in a letter

in *Lopez*, "the adjective 'any' is not ambiguous; it has a well-established meaning" and, "[r]ead naturally, . . . has an expansive meaning, that is, one or some indiscriminately of whatever kind." 129 F.3d at 1192 (citations omitted). "Any person" certainly includes Coronado, and "any law or regulation" includes the ECPA, the RFPA and Florida law. (In fact, § 5318(g)(3) immunizes BankAtlantic from suit under every source of law except the United States Constitution.) Because BankAtlantic disclosed Coronado's account records and information pursuant to facially valid grand jury subpoenas, BankAtlantic is immune from any lawsuit arising from these disclosures.[3] Therefore, the district court properly granted BankAtlantic's motion for summary judgment.

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that the immunity provisions of the Act sought "to provide the broadest possible exemption from civil liability for the reporting of suspicious transactions. . . ." Cong. Rec. E57-02 (1993).

[3] Our determination that BankAtlantic is immune under the Annunzio-Wylie Act eliminates any need to address Coronado's second argument on appeal (that he is entitled to summary judgment on his ECPA and RFPA claims).

B. Discovery

In his remaining argument, Coronado contends that the district court improperly denied his motions to compel discovery because the denials inhibited his ability to defend against BankAtlantic's motion for summary judgment. Specifically, Coronado contends that BankAtlantic should have been compelled to (1) provide him with copies of the bank's FedWire Funds Transfer System contracts, (2) provide copies of all documents describing the bank's computer accounting system, (3) provide copies of the grand jury subpoenas and documents produced to the grand juries and (4) allow Coronado to depose Frank Greico, a member of BankAtlantic's upper management, about the contents of the grand jury subpoenas and documents produced. Coronado cites little if any legal authority for the allegedly "required" disclosure of any of these materials. Despite his protestations, we find that the district court did not abuse its discretion by denying these motions.

As Coronado concedes in his brief, the FedWire contracts

and information on BankAtlantic's computer system were only relevant to establishing his claim under the ECPA. But, given that BankAtlantic is immune under the Annunzio-Wylie Act, Coronado's claim under the ECPA is not viable. Hence, any possible abuse of discretion in denying Coronado's motion to compel production of this information was harmless. See *Dykes v. Depuy*, Inc., 140 F.3d 31, 42 (1st Cir. 1998).

Coronado's other two motions to compel sought production of grand jury materials. Coronado claims that he wanted access to these materials to determine whether BankAtlantic really complied with the subpoenas as it claims. BankAtlantic could not turn over the documents, nor could Mr. Greico answer deposition questions about the grand jury, because it is illegal for them to do so. See 18 U.S.C. § 1510(b)(2) (making it a crime for a bank to directly or indirectly notify a customer of the contents of a grand jury subpoena or information furnished to a grand jury pursuant to a subpoena). The only way Coronado could have obtained grand jury materials was through

a court order pursuant to Federal Rule of Criminal Procedure 6(e)(3)(C)(i), but he never sought such an order. Even if he had, a district court has "substantial discretion" in balancing the need for disclosure with the need for grand jury secrecy. *Douglas Oil Co. of California v. Petrol Stops Northwest*, 441 U.S. 211, 223 (1979).

Here, Coronado's need for disclosure was tied to his desire to verify BankAtlantic's strict compliance with the subpoenas. Frank Greico and a government investigator each filed an affidavit stating that the information submitted by BankAtlantic was limited to that which was responsive to the subpoenas, and the district court gave Coronado an opportunity to depose both on their affidavits before it granted summary judgment. Additionally, to verify for itself the accuracy of the affidavits, the district court reviewed the subpoenas and the documents provided to the grand juries in camera. We believe this procedure appropriately balanced the need for grand jury secrecy with Coronado's needs as a litigant. See *Young v. United*

States, 406 F.2d 960, 961 (D.C. Cir. 1969) (noting that an in camera inspection is the proper way to maintain the secrecy of grand jury proceedings and meet the needs of litigation). Therefore, the district court did not abuse its discretion by denying Coronado's motion to compel production of the grand jury materials.

III. Conclusion

For the foregoing reasons, we reject Coronado's arguments on appeal and AFFIRM the judgment of the district court.

18 U.S.C. §2702 - Disclosure of contents

(a) **Prohibitions**. Except as provided in subsection (b)--

(1) a person or entity providing an electronic communication service to the public shall not knowingly divulge to any person or entity the contents of a communication while in electronic storage by that service; and

(2) a person or entity providing remote computing service to the public shall not knowingly divulge to any person or entity the contents of any communication which is carried or maintained on that service--

(A) on behalf of, and received by means of electronic transmission from (or created by means of computer processing of communications received by means of electronic transmission from), a subscriber or customer of such service; and

(B) solely for the purpose of providing storage or computer processing services to such subscriber or customer, if the provider is not authorized to access the contents of any such

communications for purposes of providing any services other than storage or computer processing.

(b) **Exceptions.** A person or entity may divulge the contents of a communication--

(1) to an addressee or intended recipient of such communication or an agent of such addressee or intended recipient;

(2) as otherwise authorized in section 2517, 2511(2)(a), or 2703 of this title;

(3) with the lawful consent of the originator or an addressee or intended recipient of such communication, or the subscriber in the case of remote computing service;

(4) to a person employed or authorized or whose facilities are used to forward such communication to its destination;

(5) as may be necessarily incident to the rendition of the service or to the protection of the rights or property of the provider of that service; or

(6) to a law enforcement agency, if such contents--

(A) were inadvertently obtained by the service provider; and

(B) appear to pertain to the commission of a crime.

18 U.S.C. §2703 Requirements for governmental access

(a) **Contents of electronic communications in electronic storage**. A governmental entity may require the disclosure by a provider of electronic communication service of the contents of an electronic communication, that is in electronic storage in an electronic communications system for one hundred and eighty days or less, only pursuant to a warrant issued under the Federal Rules of Criminall Procedure or equivalent State warrant. A governmental entity may require the disclosure by a provider of electronic communications services of the contents of an electronic communication that has been in electronic storage in an electronic communications system for more than one hundred and eighty days by the means available under subsection (b) of this section.

(b) **Contents of electronic communications in a remote computing service.**

(1) A governmental entity may require a provider of

remote computing service to disclose the contents of any electronic communication to which this paragraph is made applicable by paragraph (2) of this subsection--

(A) without required notice to the subscriber or customer, if the governmental entity obtains a warrant issued under the Federal Rules of Criminal Procedure or equivalent State warrant; or

(B) with prior notice from the governmental entity to the subscriber or customer if the governmental entity--

(i) uses an administrative subpoena authorized by a Federal or State statute or a Federal or State grand jury or trial subpoena; or

(ii) obtains a court order for such disclosure under subsection (d) of this section;

except that delayed notice may be given pursuant to section 2705 of this title.

(2) Paragraph (1) is applicable with respect to any electronic communication that is held or maintained on that

service –

(A) on behalf of, and received by means of electronic transmission from (or created by means of computer processing of communications received by means of electronic transmission from), a subscriber or customer of such remote computing service; and

(B) solely for the purpose of providing storage or computer processing services to such subscriber or customer, if the provider is not authorized to access the contents of any such communications for purposes of providing any services other than storage or computer processing.

(c) **Records concerning electronic communication service or remote computing service**.

(1) (A) Except as provided in subparagraph (B), a provider of electronic communication service or remote computing service may disclose a record or other information pertaining to a subscriber to or customer of such service (not

including the contents of communications covered by subsection (a) or (b) of this section) to any person other than a governmental entity.

(B) A provider of electronic communication service or remote computing service shall disclose a record or other information pertaining to a subscriber to or customer of such service (not including the contents of communications covered by subsection (a) or (b) of this section) to a governmental entity only when the governmental entity –

(i) obtains a warrant issued under the Federal Rules of Criminal Procedure or equivalent State warrant;

(ii) obtains a court order for such disclosure under subsection (d) of this section; or

(iii) has the consent of the subscriber or customer to such disclosure.

(C) A provider of electronic communication service or remote computing service shall disclose to a governmental entity the name, address, telephone toll billing

records, telephone number or other subscriber number or identity, and length of service of a subscriber to or customer of such service and the types of services the subscriber or customer utilized, when the governmental entity uses an administrative subpoena authorized by a Federal or State statute or a Federal or State grand jury or trial subpoena or any means available under subparagraph (B).

(2) A governmental entity receiving records or information under this subsection is not required to provide notice to a subscriber or customer.

(d) **Requirements for court order**. A court order for disclosure under subsection (b) or (c) may be issued by any court that is a court of competent jurisdiction described in section 3126(2)(A) and shall issue only if the governmental entity offers specific and articulable facts showing that there are reasonable grounds to believe that the contents of a wire or electronic communication, or the records or other information sought, are relevant and

material to an ongoing criminal investigation. In the case of a State governmental authority, such a court order shall not issue if prohibited by the law of such State. A court issuing an order pursuant to this section, on a motion made promptly by the service provider, may quash or modify such order, if the information or records requested are unusually voluminous in nature or compliance with such order otherwise would cause an undue burden on such provider.

(e) **No cause of action against a provider disclosing information under this chapter** [18 USCS @@ 2701 et seq.]. No cause of action shall lie in any court against any provider of wire or electronic communication service, its officers, employees, agents, or other specified persons for providing information, facilities, or assistance in accordance with the terms of a court order, warrant, subpoena, or certification under this chapter [18 USCS @@ 2701 et seq.].

18 U.S.C. §2707 - Civil action

(a) **Cause of action**. Except as provided in section 2703(e), any provider of electronic communication service, subscriber, or customer aggrieved by any violation of this chapter [18 USCS §§2701 et seq.] in which the conduct constituting the violation is engaged in with a knowing or intentional state of mind may, in a civil action, recover from the person or entity which engaged in that violation such relief as may be appropriate.

(b) **Relief**. In a civil action under this section, appropriate relief includes--

(1) such preliminary and other equitable or declaratory relief as may be appropriate;

(2) damages under subsection (c); and

(3) a reasonable attorney's fee and other litigation costs reasonably incurred.

(c) **Damages.** The court may assess as damages in a civil action under this section the sum of the actual damages suffered by the

plaintiff and any profits made by the violator as a result of the violation, but in no case shall a person entitled to recover receive less than the sum of $ 1,000.

(d) **Defense.** A good faith reliance on--

(1) a court warrant or order, a grand jury subpoena, a legislative authorization, or a statutory authorization;

(2) a request of an investigative or law enforcement officer under section 2518(7) of this title; or

(3) a good faith determination that section 2511(3) of this title permitted the conduct complained of; is a complete defense to any civil or criminal action brought under this chapter [18 USCS §§2701 et seq.] or any other law.

(e) **Limitation**. A civil action under this section may not be commenced later than two years after the date upon which the claimant first discovered or had a reasonable opportunity to discover the violation.

28 U.S.C. §2071. Rule-making power generally

(a) The Supreme Court and all courts established by Act of Congress may from time to time prescribe rules for the conduct of their business. Such rules shall be consistent with Acts of Congress and rules of practice and procedure prescribed under section 2072 of this title.

(b) Any rule prescribed by a court, other than the Supreme Court, under subsection (a) shall be prescribed only after giving appropriate public notice and an opportunity for comment. Such rule shall take effect upon the date specified by the prescribing court and shall have such effect on pending proceedings as the prescribing court may order.

(c) (1) A rule of a district court prescribed under subsection (a) shall remain in effect unless modified or abrogated by the judicial council of the relevant circuit.

(2) Any other rule prescribed by a court other than the Supreme Court under subsection (a) shall remain in effect unless modified or abrogated by the Judicial Conference.

(d) Copies of rules prescribed under subsection (a) by a district court shall be furnished to the judicial council, and copies of all rules prescribed by a court other than the Supreme Court under subsection (a) shall be furnished to the Director of the Administrative Office of the United States Courts and made available to the public.

(e) If the prescribing court determines that there is an immediate need for a rule, such court may proceed under this section without public notice and opportunity for comment, but such court shall promptly thereafter afford such notice and opportunity for comment.

(f) No rule may be prescribed by a district court other than under this section.

28 U.S.C. §2072 - Rules of procedure and evidence; power to prescribe

(a) The Supreme Court shall have the power to prescribe general rules of practice and procedure and rules of evidence for cases in the United States district courts (including proceedings before

magistrates thereof) and courts of appeals.

(b) Such rules shall not abridge, enlarge or modify any substantive right. All laws in conflict with such rules shall be of no further force or effect after such rules have taken effect.

(c) Such rules may define when a ruling of a district court is final for the purposes of appeal under section 1291 of this title.

31 U.S.C. § 5318(g)(3) Liability for disclosures

Any financial institution that makes a disclosure of any possible violation of law or regulation or a disclosure pursuant to this subsection or any other authority, and any director, officer, employee, or agent of such institution, shall not be liable to any person under any law or regulation of the United States or any constitution, law, or regulation of any State or political subdivision thereof, for such disclosure or for any failure to notify the person involved in the transaction or any other person of such disclosure.